

1878.

APA'JI
CHINTA'MAN
DEVDHAR
v.
GANGA'PA'I
KOM DA'JI
CHINTA'MAN.

Parmeshriimmd.⁽¹⁾ However, in the case of *Savitribai v. Luxumbai*⁽²⁾ decided on the 1st May 1878, which was a suit by a widow against her husband's paternal uncle, a Full Bench of this Court held that the fact that the latter had no ancestral property, or property which had belonged to his deceased nephew, the husband of the plaintiff, constituted a full and sufficient defence to the suit. The reasoning by which the Full Bench arrived at its conclusion in that case is applicable to the present case, and it is unnecessary to repeat it here. The case relied upon by the Assistant Judge has been fully discussed in that case. We reverse the decree of the Assistant Judge, and restore that of the Subordinate Judge, except that we direct the parties respectively to bear their own costs of the suit and both appeals.

(1) 5 Bom. H. C. Rep. 130, A. C. J.

(2) *Supra*, p. 573.

[APPELLATE CIVIL.]

Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Kembal.

May 1.

SIDLINGA'PA', SON OF BASA'PA' (ORIGINAL DEFENDANT), APPELLANT,
v. SIDA'VA' KOM SIDLINGA'PA' (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu law—Separate maintenance, wife's right to.

Although by Hindu law a husband is bound to maintain his wife, she is not entitled to a separate maintenance from him, unless she proves that, by reason of his misconduct or by his refusal to maintain her in his own place of residence, or other justifying cause, she is compelled to live apart from him.

AFTER the decision of the Full Bench reported above, at page 573, this case came before a Division Bench for its final disposal on the merits.

Shamráv Vithal for the appellant.

Respondent was not represented.

WESTROPP, C.J. :—Although by Hindu law a husband is bound to maintain his wife, she is not entitled to a separate maintenance from him, unless she establishes in proof that, by reason of his misconduct or by his refusal to maintain her in his own place of residence, or other justifying cause, she is compelled to live

* Special Appeal No. 10 of 1874.

apart from him (see special appeal No. 307 of 1872, Printed Judgments of 1873, page 1). There is not any finding, by the District Judge, that the plaintiff has proved any such case. On the contrary, the District Judge appears to have believed that she voluntarily tore off her nuptial ornament, and returned it to her husband, and of her own accord left him. We reverse the decree of the District Judge, and restore that of the Subordinate Judge, except as to costs. We direct that the parties, respectively, bear their own costs of the suit and of both appeals.

1878.

SIDLINGA'PA
v.
SIDA'VA'
KOM
SIDLINGA'PA'.

[APPELLATE CIVIL.]

Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Melvill.

KA'CHUBHAI BIN GULA'BOHAND AND ANOTHER (ORIGINAL DEFENDANTS),
APPELLANTS, v. KRISHNA'BA'I KOM BA'BA'JI (ORIGINAL PLAINTIFF),
RESPONDENT.*

1877.
November 22.

Evidence—Act I. of 1872, Section 91—Registration—Practice.

A deed of partition was executed among three brothers C, N, and B, on the 19th March 1867, but was not registered. It recited that, some years previously to its date, a division of the family property, with the exception of three houses, had been effected, and it purported to divide these houses among the brothers. In a suit brought by C's widow for the recovery of the house which fell to C's share,

Held that, although the deed did not exclude secondary evidence of the partition of the family property previously divided, yet it affected to dispose of the three houses by way of partition made on the day of its execution, and, therefore, secondary evidence of its contents was inadmissible under section 91 of the Indian Evidence Act.

A Judge is not permitted to make in appeal a different case for the appellant from that which he alleged for himself in the Court of first instance.

THIS was a special appeal from the decision of W. H. Newnham, Acting Judge of Puna, reversing the decree of Dinanáth Atmárám Dalvi, Second Class Subordinate Judge at Junnar.

The facts of the case appear from the judgment of the High Court.